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MAR 18 2005

State of Alaska  
Regulatory Commission of Alaska

EXHIBIT "A"

Fiber rate per strand per month

\$7,154

RCA No. 11 First Revision Sheet No. 23

Cancelling Original Sheet No. 23

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State of Alaska  
Regulatory Commission of Alaska

**COPPER VALLEY TELEPHONE COOPERATIVE, INC.**

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Tariff Advice No. 65-11

Effective: May 2, 2005

Issued By: COPPER VALLEY TELEPHONE COOPERATIVE, INC.

By: Tim Rennie

Title: Chief Executive Officer/General Manager

RCA No. 11 First Revision Sheet No. 2.28

Cancelling Original Sheet No. 2.28

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State of Alaska  
Regulatory Commission of Alaska

**COPPER VALLEY TELEPHONE COOPERATIVE, INC.**

**GENERAL RULES AND REGULATIONS**

**E. Establishment and Furnishing of Service**

**10. Special Contracts**

- a. The rates and charges quoted in the tariff of the Company contemplate the use of service arrangements in quantities and types regularly furnished by the Company. Where service arrangements are requested which are not provided for in the Company's applicable tariff, rates and charges will be designed to equal or exceed the Company's long-run incremental costs when in the judgment of the Company it is practical to provide the service requested.

A special contract for these services will be filed for approval with the Regulatory Commission of Alaska.

- b. Pursuant to 3 AAC 48.370(26), below is a list of the Company's Special Contracts approved by the Regulatory Commission of Alaska.

Name	Service	TA/Ref. No.	Date Filed
Copper Valley Long Distance, Inc.	Dark Fiber	TA65-11	03-18-05

L = Section E.11, Alterations on the Customer's Premises, relocated to Tariff Sheet No. 2.28.1.

Tariff Advice No. 65-11 Effective: May 2, 2005

Issued By: **COPPER VALLEY TELEPHONE COOPERATIVE, INC.**

By: Tim Rennie Title: Chief Executive Officer/General Manager  
Wholly/C/Tariff/CVTC2.28-1st

RCA No. 11 Original Sheet No. 2.28.1

Cancelling \_\_\_\_\_ Sheet No. \_\_\_\_\_

RECEIVED

APR 6 2005

State of Alaska  
Regulatory Commission of Alaska

**COPPER VALLEY TELEPHONE COOPERATIVE, INC.**

**GENERAL RULES AND REGULATIONS**

**E. Establishment and Furnishing of Service**

**11. Alterations on the Customer's Premises**

The customer shall notify the Company, at least five days in advance, whenever alterations or new construction on premises occupied by the customer necessitate changes in the Company's equipment and facilities.

When the Company is requested by the customer to install, relocate, rearrange or change outside plant facilities from one type to another, the cost of constructing the new and removing the old plant shall be borne by the customer with consent of the owner if applicable.

L = Material relocated from Tariff Sheet No. 2.28.

Tariff Advice No. 65-11

Effective: May 2, 2005

Issued By: **COPPER VALLEY TELEPHONE COOPERATIVE, INC.**

By: \_\_\_\_\_ Title: Chief Executive Officer/General Manager  
Tim Rennie

WMA&TARVTC2.28.1



**TARIFF ACTION MEMORANDUM**

Date: April 28, 2005

File No. TA65-11

Date Filed: February 16, 2005

Name of Utility: Copper Valley Telephone Cooperative Inc. (CVTC)

Staff recommends that the Commission:

1. Approve the Special Contract between Copper Valley Telephone Cooperative, Inc. and Copper Valley Long Distance filed on March 18, 2005, with TA65-11, subject to the following conditions:
  - a) The Commission may place further conditions or limitations on the contract if good cause is shown based upon review of a complaint related to the dark fiber ~~and the dark fiber~~  
~~and the dark fiber~~
  - b) Should the parties choose to extend the contract beyond the two year term, CVTC will submit this Special Contract extension for review by the Commission.

The effective date of the Special Contract should be May 2, 2005.

2. Approve Tariff Sheet Nos. 2.3, 2.28, and 2.28.1 filed on April 6, 2005 with TA65-11. The effective date of the tariff sheets should be May 2, 2005.
3. Grant waiver of certification requirements to the extent necessary, to allow CVTC to sell interexchange service for the sole purpose of the TA65-11 contract even though the utility does not hold an interexchange certificate.
4. The letter order on this matter should state that the Commission has not addressed CVTC's proposed treatment of allocable costs. Treatment of allocable costs related to this special contract will be considered if and when a review of CVTC's rates occurs, absent earlier action by the Commission.

Reasons for the above indicated recommendation:

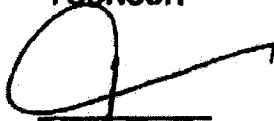

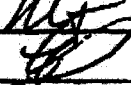


**Memo Attached**

Signed: Lori Kenyon Title: Common Carrier Specialist  
Lori Kenyon

Signed: Robin Boysen Title: Common Carrier Specialist  
Robin Boysen

---

Commission decision re this recommendation:

	DATE If different from 4/28/05	I CONCUR	I DO NOT CONCUR	I WILL WRITE A DISSENTING STATEMENT*
Giard				
Harbour				
Johnson				
Price				
Strandberg				

Special Instructions to Staff:

\* If this column initialed, Staff will contact the Commissioner for the statement; otherwise, the dissent will simply be noted at the close of the By Direction letter or order.

**STATE OF ALASKA**  
**The Regulatory Commission of Alaska**  
701 West Eighth Avenue, Suite 300  
Anchorage Alaska 99501

**M E M O R A N D U M**

**TO: Commissioners:**  
Kate Giard, Chairman  
Dave Harbour  
Mark K. Johnson  
Anthony A. Price  
James S. Strandberg

**DATE:** April 21, 2005

**FROM:** Robin Boysen, Common Carrier Specialist

- **SUBJECT:** TA65-11 – Copper Valley Telephone Cooperative, Inc. (CVTC)  
Special Contract with Copper Valley Long Distance (CVLD) for dark fiber.

**Recommendation**

**Staff recommends that the Commission:**

1. Approve the Special Contract between Copper Valley Telephone Cooperative, Inc. and Copper Valley Long Distance filed on March 18, 2005, with TA65-11, subject to the following conditions:
  - a) The Commission may place further conditions or limitations on the contract if good cause is shown based upon review of a complaint related to the dark fiber.
  - b) Should the parties choose to extend the contract beyond the two year term, CVTC will submit this Special Contract extension for review by the Commission.

The effective date of the Special Contract should be May 2, 2005.

2. Approve Tariff Sheet Nos. 2.3, 2.28, and 2.28.1 filed on April 6, 2006 with TA65-11. The effective date of the tariff sheets should be May 2, 2005.
3. Grant waiver of the certification requirements to the extent necessary, to allow Copper Valley Telephone Cooperative, Inc. to sell interexchange service for the sole purpose of the TA65-11 contract even though the utility does not hold an interexchange certificate.
4. The letter order on this matter should state that the Commission has not addressed CVTC's proposed treatment of allocable costs. Treatment of



allocable costs related to this special contract will be considered if and when a review of CVTC's rates occurs, absent earlier action by the Commission.

### **Procedural History**

On March 18, 2005, CVTC filed TA 65-11, a Special contract with the Copper Valley Long Distance (CVLD) for the lease of dark fiber between Valdez and Glennallen. On April 6, 2005 CVTC supplemented the filing with tariff sheets reflecting the addition of the Special Contract to the tariff.

Public notice was issued March 23, 2005, with a deadline of April 15, 2005 for comments in support of, or opposition to, the filing. No comments have been received in response to this filing.

### **Issues**

1. Was the Special Contract in TA65-11 properly filed?
2. Is the use of a special contract appropriate?
3. Does CVTC have authority to sell the proposed service?
4. Are the proposed rates and terms of the special contract fair and reasonable?

### **Discussion**

#### **Was the Special Contract properly filed?**

Pursuant to 3 AAC 48.220(c) special contracts are treated as tariff filings. 3 AAC 48.270(a) specifies the format of the tariff advice letters used to transmit a tariff proposal to the Commission. General requirements applicable to all tariff advice letters include a statement setting out the estimated number of customers affected, the estimated annual revenues under both the existing and proposed rates, and exact date on which the utility wishes the filing to take effect. Did you really want this in here?

3 AAC 48.270(a) specifies additional requirements for special contracts, and requires the filing party to name the signatories to the agreement; give the date of execution; and briefly outline the provisions of the contract. That regulation also requires the filing party to state the reason the customer was not required to take service under an existing tariff schedule or an appropriate revision of it designed to accommodate the customer and all others similarly situated. The tariff advice letter filed by CVTC specifies the signatories to the special contract, briefly describes the provisions of the contract and provides the reason the customer was not required to take service under the existing tariff. Attached to the tariff advice letter is a copy of the executed agreement, revealing the date of the execution. Staff finds that the special contract was properly submitted and complies with the requirements of 3 AAC 48.220 (c) and 3 AAC 48.270(a).

#### **Does the Special Contract contain provisions required by regulation:**

3 AAC 48.390(a) requires that each special contract filed with the commission contain a

provision indicating the understanding of the parties that the contract (1) does not take effect without prior approval of the Commission, and 2) is at all times subject to revisions by the Commission. The contract introduction and Section 24 of the Contract document specifically addresses each of these requirements.

**Is the use of a Special Contract appropriate?**

A provision of 3 AAC 48.270(a) is that the filing party provide the reason the customer was not required to take service under an existing tariff schedule. CVTC proposes to lease the dark fiber facilities through a Special Contract because dark fiber is not a local service offering.<sup>1</sup>

**Does CVTC have authority to sell the proposed service?**

Dark fiber is unused fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.<sup>2</sup> Presumably CVLD will provide the electronics to "light" the fiber for the purposes of providing interexchange services. The dark fiber leased from CVTC would span between exchanges. At issue is whether CVTC, a local exchange provider, has authority to provide the proposed service as it appears to be interexchange in nature.

In its tariff advice filing, CVTC stated that "dark fiber is not considered a local service offering".<sup>3</sup> CVTC contends that since the fiber is dark, it only functions as a "pipe" and it is not providing an interexchange service but is merely a lease of facilities.<sup>4</sup> When asked, CVTC was unable to provide a legal cite in support of its position that the special contract for dark fiber was not for an interexchange service.

Under AS 42.05.221, a "public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that the public convenience and necessity require or will require the service." (emphasis added) If dark fiber is not a "service", then dark fiber would likely be a "commodity" for which the utility must hold a certificate prior to obtaining compensation for services provided to the public. CVTC currently holds a local exchange certificate, however the dark fiber runs between exchanges. As a result, the provision of dark fiber would not appear to be a local service covered under CVTC's local certificate. Staff concludes that the dark fiber in question is likely an interexchange service or commodity for which an interexchange certificate may be required. However, it is possible that no interexchange certificate is required if CVTC is not operating as a "public utility" as it serves less than 10 interexchange customers. To Staff's knowledge the Commission has not addressed a similar certification issue in the

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<sup>1</sup> Ibid. Page 1.

<sup>2</sup> CC Docket No. 01-338, CC Docket No. 96-98, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, released August 21, 2003, paragraph 311.

<sup>3</sup> Ibid. Page 1.

<sup>4</sup> Email, L Honchen, 4/19/05.

past.<sup>5</sup>

Rather than fully adjudicate the issue of whether CVTC requires an interexchange certificate for provision of the special contract, Staff recommends that the Commission grant CVTC waiver of any certification requirements that might apply, for the limited purpose of providing the proposed service to CVLD. There would appear to be little benefit in requiring CVTC to incur the costs of certification for the sole purpose of providing the special contract service.

Are the terms and rates of the Special Contract reasonable?

There are 24 strands of buried fiber between Valdez and Glennallen. The Special Contract is for 4 of these strands, and the cover letter mentions that 2 strands will be retained for CVTC company-specific use.<sup>6</sup> Staff inquired about the other 18 strands and CVTC filed an explanation and a diagram illustrating that though the Valdez and Glennallen groupings each start with all 24 strands, some fiber strands drop off as they pass through the various carrier service areas.<sup>7</sup> As a result, it is Staff's understanding that only 6 strands are available for use between Valdez and Glennallen.

The CVTC proposal to lease 4 dark fiber strands presents an unusual situation in which a local exchange appears to be selling interexchange service. The total fiber investment by the LEC is \$9,298,787<sup>8</sup>, which has been financed through rural loans. This lease of dark fiber will permit CVLD to expand its tariff offerings in the near future by providing point-to-point transport service between Valdez and Glennallen (117 Miles). If CVLD wants to provide services outside of this geographic range spanned by the fiber, it would still have to purchase or lease facilities from one of the facilities based competitors, GCI or AT&T Alascom.<sup>9</sup>

Factors to consider:

- 1) CVLD is leasing 4 dark fiber strands. This would appear to be a relatively large number of fibers to provide service along a fairly limited route (Valdez to Glennallen) to few customers. In comparison, in past years Alascom, Inc. employed less than half the same number of strands to link the entire state of Alaska by undersea fiber to the contiguous United States.

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<sup>5</sup> CVTC indicated that there was a past special contract between TelAlaska, Inc. and Eyscom, Inc. dealing with provision of dark fiber (TA78-165), however that contract appeared to be for fiber within an exchange and not between exchanges.

<sup>6</sup> Ibid, Page 1.

<sup>7</sup> Email, M Barnett, 4/6/05.

<sup>8</sup> TA85-11 Schedule A1

<sup>9</sup> U-05-029, 3/18/05, Motion for Waiver of Requirement to File Wholesale Tariff, Page 2.

- 2) CVLD, as a non-dominant competitive interexchange carrier, will be able to sell IXC services at a market rate, subject to the "just and reasonable" rate requirement of 3 AAC 53.375.
- 3) Though there is other fiber available leaving Valdez, this is the only fiber directly linking Glennallen and Valdez.
- 4) CVLD will secure all of the available dark fiber that CVTC has available for sale. There would not be an opportunity for other carriers to purchase similar dark fiber from CVTC. These carriers would instead go through CVLD.
- 5) CVLD has filed a request for continued waiver of the requirement to provide a wholesale tariff due to CVLD's ongoing status as a de minimis carrier.<sup>10</sup>

Staff is not suggesting that CVTC or CVLD will enter into anticompetitive practices. However, potential will be there for CVLD to control Glennallen to Valdez fiber facilities in the state during the term of the contract.

The terms of the contract include a description of the services that will be provided, the term of the agreement (2 years), the obligations of the service provider, and a mechanism for renewal or termination. In addition, Article 24 states:

Added a line space

This contract, as filed with the RCA, and pursuant to 3 AAC 48.390, is, at all times, subject to revision by the RCA.

Because of the underlying issues brought up by this Special Contract Staff recommends that the Commission approve the special contract for the two year period, with the following conditions:

- 1) The Commission may place further conditions or limitations on the contract if good cause is shown based upon review of a complaint related to the dark fiber.
- 2) Should the parties choose to extend the contract beyond the two year term, CVTC will submit this Special Contract extension for review by the Commission.

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<sup>10</sup> U-05-029, Motion for Waiver of Requirement to File Wholesale Tariff, 3/18/05.

**EXHIBIT NO. 5**

**Regulatory Commission of Alaska Extension of Term of  
Special Contract for the Valdez-Glennallen Route**



DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT  
Regulatory Commission of Alaska

Sarah Fells, Governor  
Emil Notti, Commissioner  
Anthony A. Price, Chairman

November 20, 2007

In reply refer to: Tariff Section  
File: TA83-11  
LO#: L0700487

Dave Dengel  
General Manager  
Copper Valley Telephone Cooperative, Inc. (CVTC)  
P. O. Box 337  
Valdez, Alaska 99686

Dear Mr. Dengel:

In its Tariff Action meeting on November 15, 2007, the Commission granted the request filed on October 2, 2007, by Copper Valley Telephone Cooperative, Inc., with TA83-11 to extend the term of the special contract between itself and Copper Valley Long Distance, Inc. for the lease of dark fiber. In TA83-11, CVTC proposed to exercise Section 13 of the special contract. Section 13 provides for the automatic renewal of the special contract on a year per year basis. The effective date of the contract extension is November 15, 2007.

BY DIRECTION OF THE COMMISSION (Commissioners Dave Harbour and Janis W. Wilson, Not Participating)

Sincerely,

REGULATORY COMMISSION OF ALASKA

Mary J. Vitone  
Chief, Tariff Section

cc: Michelle D. Bennett  
Hoscher & Ulmer, Inc.  
800 East Diamond Blvd. Ste #3-840  
Anchorage AK 99516

701 W. 5th Avenue, Suite 300, Anchorage, Alaska 99501-5469  
Telephone: (907) 276-6222 Fax: (907) 276-0160 TTY: (907) 276-4553  
Website: <http://rca.alaska.gov>

**EXHIBIT NO. 6**

**Special Contract for the Glennallen-Chitina Route**

## **SPECIAL CONTRACT**

### **DARK FIBER LEASE**

THIS SPECIAL CONTRACT ("Contract") is entered into by and between Copper Valley Telephone Cooperative, Inc. ("CVTC"), and Copper Valley Long Distance, Inc. ("CVLD"). CVLD is a wholly owned subsidiary of CVTC. This contract sets forth the terms and conditions for the lease of dark fiber from CVTC's landline network to CVLD.

The effective date of this Contract is the later date on which all of the following conditions are satisfied: (1) the Contract is executed by both parties; and (2) the Administrator of the Rural Utilities Service has issued written approval of the Contract.

1. **Purpose.** The purpose of this Contract is to delineate:
  - a. a description of the facilities;
  - b. the location of the facilities;
  - c. the rates and charges for the leasing of the facilities; and
  - d. all general contractual provisions.
2. **Description of Facilities.** The subject of this Contract is the lease of dark fiber by CVTC to CVLD (the "Facilities"). CVLD will lease four (4) strands of dark fiber from CVTC. The dark fiber extends from CVTC's central office (CO) in Chitina along the Edgerton Highway approximately 34 miles northwest where it ties into the existing fiber facilities at approximately mile 82 of the Richardson highway. This span of fiber facility is approximately 34 miles long. Notwithstanding any provision of this Contract, CVTC shall be under no obligation to provide to CVLD any facilities, employees, or other resources or services that may be detrimental to the operation of CVTC.
3. **Definition.** "DARK FIBER" is fiber that has not been activated through connection to the electronics that "light" it, and thereby rendering it capable of carrying communication services.
4. **Location.** CVTC's central office in the Chitina exchange (located at Fairbanks and Main Streets in Chitina Alaska) will serve as the beginning point of presence (POP) for connection of facilities. The termination point will be where the approximately 34 mile span of dark fiber from Chitina ties into the existing fiber facility at mile 82 of the Richardson Highway.
5. **Rates and Charges.** The rates and charges that apply to the provision of dark fiber by CVTC to CVLD pursuant to the terms of this contract are set forth in Exhibit A. In the event that the Facilities provided hereunder or the charges made therefore at any time become subject to any federal, state, or local regulation or tariff, then the terms and conditions of this Contract shall be deemed amended to conform to any conflicting terms and conditions in effect under such regulation or tariff, provided, however, that all non-conflicting terms and conditions of this Contract shall remain valid and effective.



If notice is served by hand-delivery, it shall be effective under the same ground rules as specified above with respect to notice served by fax.

10. **Warranties.** Neither party makes any representations or warranties to the other concerning the specific quality of the Facilities provided under this Contract. Both parties disclaim, without limitation, any warranty or guarantee of merchantability or fitness for a particular purpose, arising from course of performance, course of dealing, or usages of trade.
11. **Limitation of Liability.** Neither party shall be responsible to the other for any indirect, special, consequential or punitive damages, including (without limitation) damages for loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted, or done hereunder, whether arising in contract or tort, provided that the foregoing shall not limit a party's obligation under Section 12 to indemnify, defend and hold the other party harmless against amounts payable to third parties or for damages to premises or equipment.
12. **Indemnification.** Each party agrees to reimburse the other party for damages to premises or equipment resulting from a party's negligence in the installation, maintenance or removal of facilities, services or arrangements. To the extent not prohibited by law, each party shall at the other's request indemnify, defend and hold harmless the other party and each of its officers, directors, employees and agents from any and all claims by any third party for actual or alleged infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right now known or later developed to the extent that such claim or action arises from the indemnifying party's or the indemnifying party's customers' use of either party's services. CVLD agrees to indemnify and hold harmless CVTC from all claims by CVLD's customers or subscribers arising from CVLD's discontinuance of its services to one of its subscribers or customers.
13. **Term.** This Contract shall have an initial term of ten (10) years, and shall automatically be renewed from year to year thereafter, unless terminated in accordance with Section 15 below.
14. **Governing Law and Venue.** The validity, construction and performance of this Contract shall be governed by and interpreted in accordance with laws of the State of Alaska. Any lawsuit brought to enforce this Contract, or otherwise arising from this Contract, shall be brought in the Superior Court for the State of Alaska in Anchorage, or in an Anchorage federal court.
15. **Termination.** This Contract may be terminated by either party upon ninety (90) days written notice or at any other time mutually agreed upon by the parties in writing. The Contract may also be terminated by either party for repeated or willful material violation or refusal to comply with the provisions of this Contract, including payment provisions, if a party has failed to cure such violation or refusal within thirty (30) days following the

defaulting party's receipt of written notice of the violation or refusal. This Contract shall immediately terminate upon the suspension, revocation or termination of either party's authority to provide services or upon either party's insolvency, inability to pay debts as they mature, or has a trustee or receiver or officer of the court appointed to control or supervise all or any substantial part of its assets or business. This Contract may also be terminated as provided for in Section 24. Notwithstanding any provision of this Contract to the contrary, the parties agree to terminate this Contract when requested to do so by the Administrator of the Rural Utilities Service.

16. **Nonwaiver.** No waiver of any provisions of this Contract and no consent to any default under this Contract shall be effective unless it is in writing and properly executed by or on behalf of the party against whom such waiver or consent is claimed. No course of dealing or failure of any party to strictly enforce any term, right, or condition of this Contract in any instance shall be construed as a general waiver or relinquishment of such term, right or condition. Waiver by either party of any default by the other party shall not be deemed a waiver of any other default.
17. **Assignment.** Neither party shall have the right to assign this Contract, except to the United States of America, without the consent in writing of the other party and of the Administrator of the Rural Utilities Service. Written consent by the other party to an assignment of this Contract shall not be unreasonably withheld or delayed. All obligations, duties and rights of any party under this Contract shall be binding on all successors in interest and assigns of such party.
18. **Compliance with Laws.** Nothing in this Contract shall be deemed an admission by either party hereto that any provision of state or federal law has been complied with, nor shall such Contract, or any portion thereof, be deemed a waiver of any rights or remedies that either party may have under state or federal law.
19. **Entire Contract.** This Contract and all appendices and amendments embody the entire Contract of the parties. There are no promises, terms, conditions, or obligations other than those set forth herein. This Contract supersedes all previous communications, representations, or contracts, whether oral or written, between the parties.
20. **Modifications.** This Contract shall only be amended, modified or changed in writing, executed by an authorized representative of the parties, with the same formality as this Contract was executed and such writing shall be attached to this Contract as an appendix. No amendment shall be made to this Contract without the consent of the Administrator of the Rural Utilities Service.
21. **Severance.** In the event a portion of this Contract is held to be unenforceable or inapplicable, that portion shall be severed from the Contract and the remainder shall continue in full force, provided, however, that if the severing of a provision makes this Contract in its entirety impossible to perform, the Contract shall be terminated.

22. **Construction.** This Contract shall not be construed either in favor or against either party, regardless of which party drafted the Contract or specific language within the Contract.
23. **No Third Party Beneficiaries.** The provisions of this Contract are for the benefit of the parties hereto and not for any other person. This Contract shall not confer upon any person not a party hereto any right, benefit or interest of any sort.
24. The parties believe that this Contract is not subject to approval by the Regulatory Commission of Alaska ("RCA"). In the event it is determined that this Contract is subject to RCA approval, either party may terminate this Contract within 10 days after such determination. If neither party terminates this Contract pursuant to this section, the parties shall cooperate to obtain any required RCA approval. In such event, this Contract shall be subject to RCA approval and will, at all times, be subject to revisions by the RCA.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates shown below:

Copper Valley Telephone Cooperative, Inc.

By: DADQ

Its: CEO

Date: 1/22/09

Copper Valley Long Distance, LLC

By: Ken M. Spunkle

Its: Vice President

Date: 1/22/09

Exhibit A

**EXHIBIT A**

**DARK FIBER LEASE - CHITINA TO MI 82 RICHARDSON HIGHWAY**

Fiber rate per strand per month

**\$ 2,080.78**

**EXHIBIT NO. 7**

**Special Contract for the Glennallen-Mentasta Route**

## **SPECIAL CONTRACT**

### **DARK FIBER LEASE**

THIS SPECIAL CONTRACT ("Contract") is entered into by and between Copper Valley Telephone Cooperative, Inc. ("CVTC"), and Copper Valley Long Distance, Inc. ("CVLD"). CVLD is a wholly owned subsidiary of CVTC. This contract sets forth the terms and conditions for the lease of dark fiber from CVTC's landline network to CVLD.

The effective date of this Contract is the later date on which the contract is executed by both parties.

1. **Purpose.** The purpose of this Contract is to delineate:
  - a. a description of the facilities;
  - b. the location of the facilities;
  - c. the rates and charges for the leasing of the facilities; and
  - d. all general contractual provisions.
2. **Description of Facilities.** The subject of this Contract is the lease of dark fiber by CVTC to CVLD (the "Facilities"). CVLD will lease four (4) strands of dark fiber from CVTC. The dark fiber extends from CVTC's central office (CO) in Glennallen approximately 14.5 miles north on the Glenn Highway to the junction of the Tok Cutoff, the fiber continues on Tok Cutoff north approximately 85.5 miles where it ties into the existing fiber facilities. This span of fiber facility is approximately 100 miles long. Notwithstanding any provision of this Contract, CVTC shall be under no obligation to provide to CVLD any facilities, employees, or other resources or services that may be detrimental to the operation of CVTC.
3. **Definition.** "DARK FIBER" is fiber that has not been activated through connection to the electronics that "light" it, and thereby rendering it capable of carrying communication services.
4. **Location.** CVTC's central office in the Glennallen exchange (located at mile 189.8 on the Glenn Highway in Glennallen Alaska) will serve as the beginning point of presence (POP) for connection of facilities. The termination point will be where the approximately 100 mile span of dark fiber from Glennallen ties into existing fiber facility at mile 85.5 on the Tok Cutoff on the Glenn Highway.
5. **Rates and Charges.** The rates and charges that apply to the provision of dark fiber by CVTC to CVLD pursuant to the terms of this contract are set forth in Exhibit A. In the event that the Facilities provided hereunder or the charges made therefore at any time become subject to any federal, state, or local regulation or tariff, then the terms and conditions of this Contract shall be deemed amended to conform to any conflicting terms

and conditions in effect under such regulation or tariff, provided, however, that all non-conflicting terms and conditions of this Contract shall remain valid and effective.

6. **Billing.** CVTC shall invoice CVLD at the beginning of each month in advance of services to be rendered. Invoices are due within (20) days of the date of the invoice. Each payment shall include sufficient detail so that the receiving party may reasonably verify the accuracy of the payment. Payments are due by the 1<sup>st</sup> day of the month. Late payments shall be with interest at a rate that is lesser of 10.5 percent per annum or the maximum legal rate of interest under applicable law.
7. **Proprietary Information.** During the term of this Contract, the parties may, but shall not be obligated to, disclose information to each other that they consider proprietary or confidential. Without specific prior written consent, except by law or court order, a party shall not disclose to any third party, including any competitors of CVLD or CVTC, any information supplied to that party by the other party under this Contract if the information was not lawfully known to the other party from a source other than a party to this Contract and consists of information bearing upon the determination of amounts payable under this Contract or consists of other information designated in writing by the supplying party as confidential. This obligation of confidentiality shall survive the termination of this Contract for any reason.
8. **Force Majeure.** The performance of a party under this Contract shall be excused to the extent that such performance is prevented by labor difficulties, governmental orders, civil commotion, acts of nature, weather conditions, and other circumstances beyond the reasonable control of the party.
9. **Notices.** All notices or other communications hereunder shall be deemed to have been duly given when made in writing and delivered in person or sent by facsimile to the receiving party, or three days after mailing by first class mail, postage prepaid, at the address listed below.

**Copper Valley Telephone Cooperative, Inc.**

Chief Executive Officer and General Manager  
Copper Valley Telephone Cooperative, Inc.  
P.O. Box 337  
Valdez, AK 99686  
Telephone: (907) 835-2231  
Facsimile: (907) 835-7813

**Copper Valley Long Distance, Inc.**

General Manager  
Copper Valley Long Distance, Inc.  
P.O. Box 1062  
Valdez, Alaska 99686  
Telephone: (907) 835-2231  
Facsimile: (907) 835-7813

Notices served by fax shall be effective upon receipt if delivery is accomplished before 5:00 p.m. local time during an ordinary business day, and shall be effective at the beginning of the next following business day if made at any time after 5:00 p.m. local time of a business day.

If notice is served by hand-delivery, it shall be effective under the same ground rules as specified above with respect to notice served by fax.

10. **Warranties.** Neither party makes any representations or warranties to the other concerning the specific quality of the Facilities provided under this Contract. Both parties disclaim, without limitation, any warranty or guarantee of merchantability or fitness for a particular purpose, arising from course of performance, course of dealing, or usages of trade.
11. **Limitation of Liability.** Neither party shall be responsible to the other for any indirect, special, consequential or punitive damages, including (without limitation) damages for loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted, or done hereunder, whether arising in contract or tort, provided that the foregoing shall not limit a party's obligation under Section 12 to indemnify, defend and hold the other party harmless against amounts payable to third parties or for damages to premises or equipment.
12. **Indemnification.** Each party agrees to reimburse the other party for damages to premises or equipment resulting from a party's negligence in the installation, maintenance or removal of facilities, services or arrangements. To the extent not prohibited by law, each party shall at the other's request indemnify, defend and hold harmless the other party and each of its officers, directors, employees and agents from any and all claims by any third party for actual or alleged infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right now known or later developed to the extent that such claim or action arises from the indemnifying party's or the indemnifying party's customers' use of either party's services. CVLD agrees to indemnify and hold harmless CVTC from all claims by CVLD's customers or subscribers arising from CVLD's discontinuance of its services to one of its subscribers or customers.
13. **Term.** This Contract shall have an initial term of ten (10) years, and shall automatically be renewed from year to year thereafter, unless terminated in accordance with Section 15 below.
14. **Governing Law and Venue.** The validity, construction and performance of this Contract shall be governed by and interpreted in accordance with laws of the State of Alaska. Any lawsuit brought to enforce this Contract, or otherwise arising from this Contract, shall be brought in the Superior Court for the State of Alaska in Anchorage, or in an Anchorage federal court.
15. **Termination.** This Contract may be terminated by either party upon ninety (90) days written notice or at any other time mutually agreed upon by the parties in writing. The Contract may also be terminated by either party for repeated or willful material violation or refusal to comply with the provisions of this Contract, including payment provisions, if



a party has failed to cure such violation or refusal within thirty (30) days following the defaulting party's receipt of written notice of the violation or refusal. This Contract shall immediately terminate upon the suspension, revocation or termination of either party's authority to provide services or upon either party's insolvency, inability to pay debts as they mature, or has a trustee or receiver or officer of the court appointed to control or supervise all or any substantial part of its assets or business

16. **Nonwaiver.** No waiver of any provisions of this Contract and no consent to any default under this Contract shall be effective unless it is in writing and properly executed by or on behalf of the party against whom such waiver or consent is claimed. No course of dealing or failure of any party to strictly enforce any term, right, or condition of this Contract in any instance shall be construed as a general waiver or relinquishment of such term, right or condition. Waiver by either party of any default by the other party shall not be deemed a waiver of any other default.
17. **Assignment.** Neither party shall have the right to assign this Contract, except to the United States of America, without the consent in writing of the other party and of the Administrator of the Rural Utilities Service. Written consent by the other party to an assignment of this Contract shall not be unreasonably withheld or delayed. All obligations, duties and rights of any party under this Contract shall be binding on all successors in interest and assigns of such party.
18. **Compliance with Laws.** Nothing in this Contract shall be deemed an admission by either party hereto that any provision of state or federal law has been complied with, nor shall such Contract, or any portion thereof, be deemed a waiver of any rights or remedies that either party may have under state or federal law.
19. **Entire Contract.** This Contract and all appendices and amendments embody the entire Contract of the parties. There are no promises, terms, conditions, or obligations other than those set forth herein. This Contract supersedes all previous communications, representations, or contracts, whether oral or written, between the parties.
20. **Modifications.** This Contract shall only be amended, modified or changed in writing, executed by an authorized representative of the parties, with the same formality as this Contract was executed and such writing shall be attached to this Contract as an appendix.
21. **Severance.** In the event a portion of this Contract is held to be unenforceable or inapplicable, that portion shall be severed from the Contract and the remainder shall continue in full force, provided, however, that if the severing of a provision makes this Contract in its entirety impossible to perform, the Contract shall be terminated.
22. **Construction.** This Contract shall not be construed either in favor or against either party, regardless of which party drafted the Contract or specific language within the Contract.

23. **No Third Party Beneficiaries.** The provisions of this Contract are for the benefit of the parties hereto and not for any other person. This Contract shall not confer upon any person not a party hereto any right, benefit or interest of any sort.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates shown below:

Copper Valley Telephone Cooperative, Inc.

By: *[Signature]*

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Copper Valley Long Distance, LLC

By: *Rene M. Spolch*

Its: *President*

Date: *11/21/09*

Attachment A

**Attachment A**

**DARK FIBER LEASE**

Fiber rate per strand per month	\$ 4,931.22
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